



November 12, 2015

Ex Parte

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

RE: Applications of Charter Communications, Inc., Time Warner Cable Inc.,
and Advance/Newhouse Partnership for Consent To Transfer Control of
Licenses and Authorizations, MB Docket No. 15-149

Dear Ms. Dortch:

Cable consolidation has reached a point where the further consolidation proposed by the acquisition of Time Warner Cable, Inc. (Time Warner) and Bright House Networks (BHN) by Charter Communications Inc. (Charter) (collectively, the “Applicants”) must be carefully scrutinized by the FCC.¹ In a speech delivered earlier this summer, Chairman Tom Wheeler called broadband “the defining infrastructure of the 21st century.”² He emphasized the need for incumbent local exchange carriers (ILECs) to become “more fulsome competitors to cable operators’ dominant position in high-speed broadband.”³ Cable’s dominant position in the offering of high-speed broadband should be at the forefront of the Commission’s mind as it considers the impact of increased cable consolidation and ease of coordination. Further consolidation is likely to detrimentally impact broadband competition from ILECs and other emerging competitors given the powerful tools at cable’s disposal. In its analysis of the proposed acquisition, the Commission must also account for the asymmetrical regulatory burdens that, as Chairman Wheeler has noted,⁴ direct ILEC resources and investments into legacy networks and away from broadband, hampering competition with increasingly dominant cable competitors. The United States Telecom Association (USTelecom) files these comments

¹ See, Public Notice, *Commission Seeks Comment on Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership For Consent to Transfer Control of Licenses and Authorizations*, DA 15-1010, MB Docket No. 15-149 (released September 11, 2015).

² See, Prepared Remarks of FCC Chairman Tom Wheeler, The Brookings Institution, p. 1 (June 26, 2015) (*Wheeler Brookings Speech*).

³ *Id.*, p. 2.

⁴ Prepared Remarks of FCC Chairman Tom Wheeler, Silicon Flatirons, University of Colorado Law School, Boulder, Colorado, February 10, 2014 (*Wheeler Silicon Flatirons Speech*).

on behalf of its small, medium and large company members, all of whom are striving to compete effectively with cable in broadband and video markets across the country.

1. Consolidation Will Further Coordination. Further consolidation among major cable companies is likely to make coordinated marketplace conduct against competitors easier and more likely. Indeed, such increased coordination between dominant cable operators was acknowledged by Charter CEO Tom Rutledge when he specifically referred to the potential for expanding the cooperation among cable giants, since in any post-merger environment, “[t]here will be less people to coordinate with.”⁵ The Applicants’ most recent filing with the FCC dismisses the legitimate concerns over increased cable consolidation as fears of “enhanced competition from New Charter.”⁶ But, as emphasized by other industry stakeholders expressing concerns over this proposed merger,⁷ the FCC should not be distracted from conducting a thorough analysis of this proposed merger. Rather than enhancing competition, as the applicants claim, the merger would more likely further centralize control over broadband and video services in the hands of a select few incumbent cable providers.

2. Cable-Only Venues Enhance Anticompetitive Risk. Cable’s increased potential for greater coordination and control is facilitated by the numerous cable-exclusive venues in which their industry participates. For example, in addition to the WiFi consortium referenced by AT&T in its filing, the cable industry also coordinates within the closed confines of CableLabs as well as the Cable & Telecommunications Association for Marketing (CTAM). While the activities and collaborative efforts of organizations such as the WiFi consortium and CTAM remain opaque to outsiders, it is crystal clear that participation is only open to cable incumbents.⁸

⁵ Cynthia Littleton, Variety, *Charter CEO: TW Cable Acquisition Will Lead to ‘Better Industry’ Overall*, May 26, 2015 (available at: <http://variety.com/2015/tv/news/charter-time-warner-cable-acquisition-2-1201504796/>) (visited November 12, 2015).

⁶ See, Opposition to Petitions to Deny and Response to Comments, p. 22 Charter Communications, Inc., Time Warner Cable, Inc., Advance Newhouse Partnership, MB Docket No. 15-149 (submitted November 2, 2015).

⁷ See e.g., Joint Petition to Deny Applications Of Lincolnton Networks, Inc., Tidewater Telecom, Inc., and Unitel, Inc., MB Docket No. 15-149 (submitted October 13, 2015); Petition to Deny, or in the Alternative, for Conditional Grant, MB Docket No. 15-149 (submitted October 13, 2015); Petition to Deny of Dish Network Corporation, MB Docket No. 15-149 (submitted October 13, 2015); see also, Ex Parte Notice, AT&T, MB Docket No. 15-149 (submitted October 13, 2015).

⁸ CTAM membership is currently open only to “any individual or firm engaged in the management or marketing of the cable television industry, including multisystem operators (“MSOs”),” while expressly excluding, “direct broadcast satellite, [ILECs] as of July 1, 2005, electric utilities or municipally-owned cable systems and affiliates for the foregoing.” See, CTAM Form 990, p. 33 (filed 2013). Similarly, membership in CableLabs states that a company “must be a cable television system operator, as defined by the 1984 Cable Act,” and notes that the definition “does not include open video systems or DBS (direct broadcast satellite).” See,

Similarly, Comcast's recent announcement of arrangements with other cable companies to share facilities and cooperate to serve business customers both creates another venue for coordination and removes another area of potential competition among cable companies.

In contrast, similar industry forums in other parts of the communications sector – particularly those that are directed towards the development of industry standards – are diverse, transparent and non-discriminatory with their respective membership requirements. In fact, broad-based industry organizations such as the Alliance for Telecommunications Industry Solutions (ATIS) – a standards organization that develops technical and operational standards and solutions for the information and communications technology (ICT) industry – enable ILECs to work alongside their cable counterparts in a collaborative and open framework. Unlike CableLabs, ATIS membership is open – without qualification – to “service providers, manufacturers, distributors, and developers of communications, entertainment and information technology products and services.” ATIS's non-discriminatory membership criteria is reflected in its broad range of members, which include cable providers as well as other broadband providers, competitive local exchange carriers, ILECs, consumer electronics companies, digital rights management companies, equipment manufacturers, software developers and wireless providers.

Similarly, membership in the 3rd Generation Partnership Project (3GPP) is open to members of several standardization bodies, including ATIS. 3GPP's current membership reflects the same diversity, with representatives from the cable, telco and wireless industries. Finally, the Internet Engineering Task Force (IETF), which develops and promotes voluntary Internet standards, is perhaps one of the most influential and inclusive industry bodies due, in part, to its open membership criteria which stipulates that there is “no formal membership, no membership fee, and nothing to sign.”⁹

Broad-based industry organizations such as ATIS, 3GPP and the IETF stand in stark contrast to CableLabs, which has a closed membership and a cable industry-centric agenda that has long facilitated coordination among the cable incumbents. NCTA offers general assurances that CableLabs's work is public and has never been used in an anticompetitive manner, asserting that CableLabs “routinely files notifications regarding the organization's membership and activities with the Department of Justice and Federal Trade Commission.”¹⁰ But these filings do

CableLabs website, *Become a Member* (available at: <http://www.cablelabs.com/become-a-member>) (visited November 12, 2015).

⁹ IETF website, *Getting Started in the IETF* (available at: <https://www.ietf.org/newcomers.html>) (visited November 12, 2015).

¹⁰ See, Ex Parte Notice, National Cable & Telecommunications Association, MB Docket No. 15-149, p. 5 (submitted November 6, 2015) (*NCTA Ex Parte*).

nothing to address the closed and exclusive nature of that organization or the potential for an unfair advantage that structure provides.¹¹

3. Cable Control of Video Programming Is Continuing Threat. Cable has another very effective tool at its disposal to limit broadband and video competition – increasing control over video programming inputs. In emphasizing the importance of “competition, competition, competition,”¹² Chairman Wheeler has acknowledged that broadband providers find it hard to provide new high-speed Internet access without also being able to offer a competitive video package as well.”¹³ The FCC and Congress have long recognized that cable’s control over much of the programming that other providers need to compete is an area with potential for anticompetitive conduct,¹⁴ and new competitors in the broadband marketplace have previously been targeted by cable incumbents who use their cable programming as a weapon to hobble competitive choice.¹⁵ Thus, cable’s consolidation and control over must-have video programming hinders development of truly competitive choices in today’s broadband marketplace.

¹¹ The notifications filed by CableLabs with the Department of Justice and the Federal Trade Commission, and referenced by NCTA in its ex parte, are non-substantive in nature and generally consist of boilerplate language with only nominal information. *See e.g.*, Notice Pursuant to the National Cooperative Research and Production Act Of 1993 – Cable Television Laboratories, Inc., 80 FR 6769 (February 6, 2015) (stating that “TDS Baja Broadband, Alamogordo, NM, has been added as a party to this venture.”); *see also*, Notice Pursuant to the National Cooperative Research and Production Act of 1993 – Cable Television Laboratories, Inc., 77 FR 74877 (December 18, 2012) (stating that “Lyons Communications, LLC, Lyons, CO; and Harron Communications, L.P., d/b/a MetroCast Communications, Frazer, PA, have been added as parties to this venture.”).

¹² *See*, Prepared Remarks of FCC Chairman Tom Wheeler, *The Facts and Future of Broadband Competition, 1776 Headquarters*, Washington, D.C., p. 4 (September 4, 2014) (*Wheeler 1776 Speech*).

¹³ Official FCC Blog, *Tech Transitions, Video, and the Future*, Tom Wheeler, FCC Chairman, Oct. 28, 2014 (available at: <http://www.fcc.gov/blog/tech-transitions-video-and-future>) (visited November 12, 2015).

¹⁴ *See*, *Applications of Comcast Corporation, General Electric Company and NBCV Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion and Order, 26 FCC Rcd 4238, 4252 ¶34 (2011).

¹⁵ *See*, Order, *In the Matter of AT&T Services, Inc. and Southern New England Telephone Company d/b/a AT&T Connecticut, Complainants v. Madison Square Garden, L.P. and Cablevision Systems Corp., Defendants*, DA 11-1595, 26 FCC Rcd. 13206, ¶29 (released September 22, 2011) (*AT&T Cablevision Order*); *see also*, Order, *Verizon Telephone Companies and Verizon Services Corp., Complainants, v. Madison Square Garden, L.P. and Cablevision Systems Corp., Defendants*, DA 11-1594, 26 FCC Rcd. 13145, ¶28 (released September 22, 2011) (*Verizon Cablevision Order*).

And the control of crucial programming inputs by the cable industry remains steady, despite the beginnings of transformative changes in the video marketplace, including the increasing viability of over the top video services. The Applicants alone have ownership interests in several marquee cable networks,¹⁶ and given the absence of direct competition among cable providers, they can act on their shared interests and incentives to use their significant programming holdings to exclude rivals or to raise their rivals' costs. NCTA's statement that concerns over vertically integrated cable programming "rests on an outdated view of the video programming marketplace," is misplaced.¹⁷ Unlike their cable competitors, the vast majority of ILEC video providers hold no programming interests whatsoever.¹⁸

NCTA also avoids any discussion whatsoever of Dr. John Malone, whose Liberty Broadband will be the single largest shareholder in New Charter. The transaction deepens the integration of Dr. Malone's programming assets, including the Discovery Communications family of channels, Starz, QVC, and HSN, with Time Warner Cable and Bright House Networks. As with Comcast's acquisition of NBCU, this integration gives Dr. Malone strong incentives to use his content interests to benefit his distribution interests and vice versa.¹⁹ Moreover, Dr. Malone's ownership and voting rights will give him great influence over both his content and distribution assets and, thus, the ability to act on his increased incentives. The Applicants attempt to distinguish Comcast/NBCU by noting that New Charter will not own or control this programming²⁰ and cite to a plethora of protections to mitigate these concerns.²¹ The Commission long has recognized such precautions do not prevent influence of overlapping significant, but non-controlling, interests.²²

¹⁶ See e.g., Sixteenth Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 30 FCC Rcd 3253, FCC 15-41, p. 165, Appendix B, Table B-1 (released April 2, 2015) (*Sixteenth Report*).

¹⁷ *NCTA Ex Parte*, p. 3.

¹⁸ For example, even with the recent merger between AT&T and DIRECTV, the company holds just 6 of the existing 138 RSNs. See, *Sixteenth Report*, Appendix D.

¹⁹ See, Memorandum Opinion and Order, *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licenses*, 26 FCC Rcd 4238, 4252-62 ¶¶ 34-59 (2011) (discussing the potential for exclusionary conduct and imposing remedial program access conditions).

²⁰ See e.g., Opposition to Petitions to Deny and Response to Comments, Charter Communications, Inc., pp. 44 - 47 (November 2, 2015).

²¹ *Id.*, at 50. See also Public Interest Statement, Charter Communications, Inc., p. 54 (June 25, 2015) (describing "specific precautions" related to equity interests, unaffiliated directors, and an independent Audit Committee); see also, Response of Charter Communications, Inc. to Information and Data Requests Dated September 21, 2015, pp. 105-16 (October 13, 2015).

²² See, e.g., Memorandum Opinion and Order, *News Corporation and The DIRECTV Group, Inc., Transferors, and Liberty Media Corporation, Transferee, for Authority To Transfer Control*, 23 FCC Rcd 3265, 3290 ¶ 55 (2008) (discussing the power of an influential, but non-

Further, cable's ownership of regional sports networks (RSNs) – which is widely viewed as some of the most important content in today's video marketplace²³ – has skyrocketed. In stark contrast to the 17 RSNs that were vertically integrated with a cable provider in 2005,²⁴ the Commission's most recent video competition report identified 74 that are currently owned by cable companies. Time Warner alone owns more than half of the current cable-affiliated RSNs (44).²⁵ In recent years, USTelecom member companies have been the victims of cable companies withholding RSNs.²⁶

As the Commission has repeatedly explained, “when programming is non-replicable and valuable to consumers, such as regional sports programming, no amount of investment can duplicate the unique attributes of such programming, and denial of access to such programming can significantly hinder an MVPD from competing in the marketplace.”²⁷ Given the already significant holding of sports related content by the cable industry, further consolidation and ease of coordination and the resultant increased control over such content will further exacerbate an already challenging competitive broadband and video landscape. And while NCTA asserts that its membership is “criticizing increases in programming costs,”²⁸ it is likely referring to the

controlling, shareholder); Memorandum Opinion and Order, *General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, for Authority To Transfer Control*, 19 FCC Rcd 473, 519 ¶ 98 (2003) (“Even assuming that News Corp. will not ‘control’ Hughes in a legal sense, it is beyond doubt that it will have enormous influence over Hughes.”); Report and Order, *Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996; Review of the Commission’s Cable Attribution Rules*, 14 FCC Rcd 19,014, 19,030 ¶ 36 (1999) (“An individual or firm does not need actual operational control over (or to be the management of) a company in order to exert influence and control over that company.”). Reportedly, documents unearthed in the DOJ and FCC investigations of the failed Comcast/TWC merger illustrate just how pervasive – and pernicious – such influence can be. See, Brian Fung and Cecilia Kang, *Comcast To Drop Mega-Merger with Time Warner Cable*, Washington Post (Apr. 24, 2015) (describing a Department of Justice investigation into Comcast’s alleged influence, in violation of Comcast/NBCU merger conditions, over the decision not to sell Hulu).

²³ See e.g., *AT&T Cablevision Order*, n. 8 (stating that RSN’s “typically offer non-replicable content and are considered “must have” programming by MVPDs.”).

²⁴ See, Twelfth Report, *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503, FCC 06-11, ¶ 22 (released March 3, 2006).

²⁵ *Sixteenth Report*, Appendix D.

²⁶ See e.g., *AT&T Cablevision Order*; see also, *Verizon Cablevision Order*.

²⁷ See e.g., *Order, AT&T Cablevision Order*, ¶ 30.

²⁸ *NCTA Ex Parte*, p. 3.

entirely unrelated complaints from its members directed at retransmission consent fees,²⁹ and not cable affiliated programming such as RSNs. Indeed, when the Commission last addressed issues related to vertically integrated cable programming, including RSNs, NCTA was vehemently opposed to any substantive reforms.³⁰

The resultant harms from the denial of reasonable access to video content by cable incumbents adversely impacts the deployment of broadband. The Commission has consistently emphasized how access to critical vertically integrated programming fuels broadband deployment and increases broadband penetration.³¹ On numerous occasions the Commission has concluded that broadband deployment and MVPD competition are “inextricably linked.”³² In some cases, absent reasonable access to vertically integrated cable programming, wireline competitors will be unable to deploy viable, competitive video and broadband services.

²⁹ See e.g., Comments of Time Warner Cable, Inc., MB Docket No. 10-71, pp. (June 26, 2014) (discussing broadcasters’ demands for “ever-higher retransmission consent fees.” *Id.*, p 1; discussing the ability of broadcasters to “extract spiraling fees from MVPDs and their subscribers.” *Id.*, pp. 2 – 3; discussing the “precipitous rise in retransmission consent fees in recent years.” *Id.*, p. 8. See also, Notice of Ex Parte, Charter Communications, MB Docket No. 10-71, p. 1 (December 9, 2011) (discussing the “dramatic increases in retransmission consent fees.”).

³⁰ See e.g., Comments of the National Cable & Telecommunications Association, MB Docket No. 12-68 (submitted December 14, 2012).

³¹ See e.g., Report and Order and Further Notice of Proposed Rulemaking, *Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, 22 FCC Rcd. 5101, ¶51 (2006) (concluding that “broadband deployment and video entry are ‘inextricably linked’”) (*Franchise Reform Order*); *Franchise Reform Order*, ¶62 (stating that, “[t]he record here indicates that a provider’s ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated.”); Report and Order, Notice of Proposed Rulemaking, *Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units and Other Real Estate Developments*, 22 FCC Rcd 20235, ¶20 (2007) (*MDU Order*) (stating that “broadband deployment and entry into the MVPD business are ‘inextricably linked.’”); First Report and Order, *Review of the Commission’s Program Access Rules and Examination of Programming Tying Arrangements*, 25 FCC Rcd. 746, ¶36 (2010) (concluding that “a wireline firm’s decision to deploy broadband is linked to its ability to offer video.”) (*Program Access Order*).

³² See e.g., *Franchise Reform Order* ¶51 (concluding that “broadband deployment and video entry are ‘inextricably linked’”); *Id.*, ¶62 (stating that, “[t]he record here indicates that a provider’s ability to offer video service and to deploy broadband networks are linked intrinsically, and the federal goals of enhanced cable competition and rapid broadband deployment are interrelated.”); *MDU Order*, ¶20 (stating that “broadband deployment and entry into the MVPD business are ‘inextricably linked.’”); *Program Access Order*, ¶36 (concluding that “a wireline firm’s decision to deploy broadband is linked to its ability to offer video.”).

4. Increasing Dominance of Broadband Yet Less Regulation. The effects of this proposed transaction will not just reach the video market. Cable companies have long dominated the residential broadband market, providing broadband internet access to 58% of residential customers.³³ While there is heated broadband competition in areas where other providers have deployed fiber to compete head-to-head with cable, cable is the only choice in much of the country if a customer seeks services at speeds of 25 Mbps or higher. Cable likewise has gained significant ground in the business broadband arena in recent years, serving both larger, enterprise customers as well as small businesses with their advanced broadband networks. Whether measured in terms of buildings served, or revenues, cable is gaining ground rapidly as a provider of business broadband in many parts of the country. Time Warner Cable, for example, reports adding nearly 50,000 commercial buildings in the first 9 months of 2015.³⁴ Revenue likewise rose significantly, increasing by \$112 million in the third quarter of 2015, or 15.5% over last year's third quarter results, representing the "17th consecutive quarter of year-over-year growth above \$100 million."³⁵

These facts are significant because the strongest competitors to cable providers – facilities-based, incumbent LEC broadband providers – are subject to multiple layers of regulatory oversight and requirements of their services that already significantly constrain their ability to compete with cable companies. The cable companies are immune from many of those costs and restrictions.³⁶

These are significant constraints that reduce the competitiveness of the broadband market and must be considered in any competitive analysis of the proposed acquisition. As Chairman Wheeler pointed out in a speech last year at 1776, "competition is the most effective tool for driving innovation, investment and consumer and economic benefits."³⁷ However, the Chairman continued, "[d]ue in part to outdated rules, the majority of capital investments made by U.S. telephone companies from 2006 to 2011 went toward maintaining the declining telephone network, despite the fact that only one-third of U.S. households use it at all."³⁸

³³ See, USTelecom website, Residential Competition (available at: <http://www.ustelecom.org/broadband-industry/broadband-industry-stats/residential-competition>) (visited November 12, 2015).

³⁴ See, Time Warner Cable Third-Quarter 2015 Earnings Summary, p. 4 (October 29, 2015) (available at: <http://ir.timewarnercable.com/files/2015/3Q15/Earnings-Summary-Presentation-3Q15-FINAL.pdf>) (visited November 12, 2015).

³⁵ See, Time Warner Cable (TWC) Robert D. Marcus on Q3 2015 Results - Earnings Call Transcript, October 29, 2015.

³⁶ *Wheeler Silicon Flatirons Speech*.

³⁷ Prepared Remarks of FCC Chairman Tom Wheeler, *The Facts and Future of Broadband Competition*, 1776 Headquarters, Washington, DC, September 4, 2014, Page 1.

³⁸ See, *Wheeler Silicon Flatirons Speech*, p. 5.

More than five years ago, the National Broadband Plan warned of the adverse impact of carryover regulations from the 20th Century that require telephone companies, and telephone companies alone, to continue to invest in antiquated services and technology:

“Regulations require certain carriers to maintain POTS – a requirement that is not sustainable – and lead to investments that could be stranded. These regulations can have a number of unintended consequences, including siphoning investments away from new networks and services.”³⁹

5. Conditions Needed to Address Adverse Impacts. Against this backdrop, certain conditions are likely to reduce the proposed acquisition’s potential adverse effects on broadband and video markets. First, the Commission should adopt a condition that would effectively prohibit the Applicants from giving to or receiving from other incumbent cable providers any undue preferences.

Second, the Commission should adopt a condition that would limit Dr. Malone’s ability to influence New Charter and to prohibit New Charter and Dr. Malone’s programming interests from engaging in anticompetitive self-dealing by precluding him from exercising any right to influence the operation of New Charter. These conditions are set out in more detail in the attachment to this filing.

Sincerely yours,



Jonathan Banks
Senior Vice President, Law & Policy

cc: Jim Bird, Ty Bream, Adam Copeland, Vanessa Lemmé, Elizabeth McIntyre (FCC)
John Flynn (counsel for Charter)
Steven Horvitz (counsel for Advance/Newhouse)
Matthew Brill (counsel for Time Warner Cable)
Henry Hultquist (AT&T)
Rick Chessen (NCTA)
(all via email)

³⁹ Connecting America: The National Broadband Plan, March 17, 2014, p. 59.

**Proposed Conditions on
Charter Communications, Inc., Time Warner Cable Inc.,
and Advance/Newhouse Partnership
MB Docket No. 15-149**

Restrictions on Coordination with Other MSOs

New Charter and its affiliates are prohibited from making or giving any undue or unreasonable preference or advantage to other MSOs and their affiliates, from accepting any undue or unreasonable preference or advantage from other MSOs or their affiliates, or from subjecting any particular MVPD, OVD, or provider of Broadband Internet Access Services or their affiliates to any undue or unreasonable prejudice or disadvantage as compared to other MSOs or their affiliates. As part of this prohibition, New Charter and its affiliates may not give to or receive from other MSOs or their affiliates rates, terms, and conditions related to programming, advertising, Wi-Fi roaming, or resale of fiber-optic cable facilities for service to enterprise customers that are more favorable or advantageous than those offered to other MVPDs, Broadband Internet Access Service, OVDs, or their affiliates.

**Restrictions on John Malone's Ability To Influence New Charter and the Availability of
Malone-Affiliated Programming to Unaffiliated MVPDs and OVDs**

John Malone shall not exercise any right to influence the conduct or operation of New Charter or its affiliates, including those arising from agreements, arrangements, or operation of his equity interest (*e.g.*, Dr. Malone and his representatives shall not fill any board seats, vote for directors or on other shareholder matters, exercise any management and veto rights, etc.) and shall hold his interest in New Charter and its affiliates solely as a passive economic interest. This prohibition shall extend to typical minority investor protections that Commission precedent treats as non-controlling. Furthermore, New Charter and its affiliates shall not provide Dr. Malone or his representatives or other affiliates any nonpublic information about its operations, finances, plans, etc.

Malone-affiliated companies must make programming available to competing MVPDs and OVDs at the same rates, terms, and conditions on which that programming is made available to New Charter or its affiliates. For example, any tiering or other carriage obligation that is imposed will be no more onerous on competing MVPDs and OVDs than on New Charter or its affiliates. Conversely, New Charter and its affiliates must not offer more favorable terms and conditions of carriage on its MVPD services or Broadband Internet Access Services to Malone-affiliated programming than to unaffiliated programming.